



# United States Department of the Interior

## Fish and Wildlife Service



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June 5, 2009

Mr. George DeLancey LRL-OP-FW  
U.S. Army Engineer District, Louisville District  
Newburgh Regulatory Office  
P.O. Box 489  
Newburgh, Indiana 47629-0489

Dear Mr. DeLancey:

The U.S. Fish and Wildlife Service (FWS) has reviewed Public Notice #2008-1287, concerning an application for a Department of Army permit, pursuant to Section 404 of the Clean Water Act.

The application is for proposed stream and wetland impacts associated with the Alfordsville Mine surface coal mining operation (IDNR permit #S-364) in Daviess County, Indiana.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) and are consistent with the intent of the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the U.S. Fish and Wildlife Service's Mitigation Policy.

### Impacts

We reviewed and commented on the surface mining permit application for this mining project in our letter dated March 25, 2009 (copy attached). Our main concern was for restoration of the 327 acres of forest acreage and associated stream system, most of which is in a single contiguous block. We were not aware of the on-site wetlands because they were not depicted on the NWI maps.

The stream assessment was conducted in August and in the photographs almost all of the streams were dry, making it difficult to evaluate their quality. However we did note that many of the streams were either ephemeral or too small to support aquatic life for more than a short portion of the year. Other streams showed evidence of downcutting, consistent with the applicant's impact evaluation comments that agricultural practices have caused headcutting into the headwater areas. Most of the larger headwater streams are depicted as drainageways on the USGS 10 foot contour topographic map, however it is not possible to determine the historical stream configurations from the information available. After reviewing the stream assessment we concur with the concept of not replacing the entire stream network, however we question the

current proposal to reduce it by almost 60%. Although the stream assessment sheets stated whether each stream assessment site was ephemeral or intermittent, the application did not indicate the linear extent of each type. We recommend an evaluation by an independent expert to determine whether the proposed extent of stream replacement is adequate to restore the ecological complexity of the stream system. We have no objection to the general description of the stream replacement design and riparian buffers, however the channel design and construction should be reviewed and overseen by an expert in stream restoration.

The affected wetlands appear to be mostly small and of limited value except for Wetland #1NW6 which is 2.32 acres in size, located in a forested drainageway on the southwest side of the permit area. The wetland assessment provided one photo of this wetland, and it too was dry at the time the photo was taken. The vegetation list indicates that it contains 5 common tree species with no hard mast species, and 3 common floodplain emergent species. There are no apparent unique features or high vegetative diversity, however its size makes it significant for migratory birds, amphibians and other wetland wildlife.

#### Wetland Mitigation

The proposed mitigation consists of a single 10 acre wetland located at the downstream end of the proposed stream system restoration. We concur with the size, location and species list for the mitigation wetland. On the Mitigation Location Map it appears to be trapezoidal in shape with linear boundaries. We recommend that the perimeter be irregular in shape to maximize topographic diversity.

#### Endangered Species

The proposed project is within the range of the Federally endangered Indiana bat (*Myotis sodalis*).

Please refer to the endangered species comments in our March 25, 2009 letter to the Indiana Division of Reclamation (attachment). Our 5 recommendations for Indiana bat conservation would satisfy the Endangered Species Act requirements under our National Biological Opinion to the Office of Surface Mining, and would also serve to satisfy the Section 7 requirement for the Section 404 permit. Addressing our above recommendations for stream restoration would satisfy our conservation measure #4. For purposes of the Section 404 permit conservation measures recommendations #2-5 may apply only to riparian forest associated with water resources. We especially want to emphasize measure #1; avoidance of tree clearing between April 1 and September 30.

This precludes the need for further consultation on this project as required under Section 7 of the Endangered Species Act of 1973, as amended. If, however, new information on endangered species at the site becomes available or if project plans are changed significantly, please contact our office for further consultation.

For further discussion please call Mike Litwin at (812) 334-4261 ext. 205.

Sincerely yours,

Scott E. Pruitt  
Field Supervisor

cc: U.S. EPA Region V, Aquatic Resources Section, WQW-16J, Chicago, IL  
Director, Indiana Division of Fish & Wildlife, Indianapolis, IN  
Christie Stanifer, Indiana Division of Fish and Wildlife, Indianapolis, IN  
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